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**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

DEPT. OF TRANSPORTATION  
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Joint Application of

ALITALIA-LINEE AEREE ITALIANE

CZECH AIRLINES

DELTA AIR LINES, INC.

and

SOCIETE AIR FRANCE

under 49 U.S.C. §§ 41308 and 41309 for  
approval of, and antitrust immunity for,  
alliance agreement

Docket OST-2001-

10429-2

**MOTION OF CZECH AIRLINES (CSA) FOR  
CONFIDENTIAL TREATMENT UNDER 14 C.F.R. § 302.12**

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Attorneys for Czech Airlines (CSA)

Dated: August 15, 2001

**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

<hr/> <b>Joint Application of</b>	)	
	)	
<b>ALITALIA-LINEE AEREE ITALIANE-</b>	)	
<b>CZECH AIRLINES</b>	)	
<b>DELTA AIR LINES, INC.</b>	)	
<b>and</b>	)	<b>Docket OST-2001-</b>
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	)	
<b>under 49 U.S.C. §§ 41308 and 41309 for</b>	)	
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	)	
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**MOTION OF CZECH AIRLINES (CSA) FOR  
CONFIDENTIAL TREATMENT UNDER 14 C.F.R. § 302.12**

Czech Airlines (“CSA”), pursuant to Rule 12 of the Department’s Rules of Practice, 14 C.F.R. § 302.12, hereby requests that the Department withhold from public disclosure the confidential, proprietary and commercially sensitive information CSA is filing concurrently with this Motion and under seal in the above-captioned proceeding. CSA is submitting these confidential documents to facilitate the Department’s processing of the joint application for alliance approval and antitrust immunity filed by CSA and its joint applicants, Delta Air Lines, Inc. (“Delta”), Alitalia Airlines, and Air France.

The documents for which CSA requests confidential treatment are revenue statistical reports for the period 1998-2001 and supporting translated documents. In support of this request, CSA submits the following:

**I. CSA's CONFIDENTIAL DOCUMENTS ARE PROTECTED FROM  
PUBLIC DISCLOSURE**

The confidential documents and information submitted herewith in conjunction with CSA's joint application with Delta, Air France and Alitalia for antitrust immunity are protected from public disclosure under various exemptions under the Freedom of Information Act ("FOIA"), including 5 U.S.C. § 552(b)(3) and 5 U.S.C. § 552(b)(4). The purpose of these exemptions "is to protect the confidentiality of information which citizens provide to their government, but which would customarily not be released to the public, and to facilitate citizens' ability to confide in their government." Burke Energy Corp. v. DOE, 583 F. Supp. 507, 510 (D. Kan. 1984).

FOIA paragraph (4) exempts from public disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4). This exemption has been construed to prevent public disclosure of information that is not of the type usually released to the public, and that if released would cause substantial harm to the competitive position of the person from whom the information was obtained. See, e.g., Gulf & Western Industries, Inc. v. United States, 615 F.2d 527, 530 (D.C. Cir. 1980); American Airlines, Inc. v. NMB, 588 F.2d 863, 871 (2d Cir. 1978); National Parks & Conservation Ass'n v. Kleppe, 547 F.2d 673, 684 (D.C. Cir. 1976); Joint Application of United and Lufthansa, Order 93-12-32, December 18, 1993; Joint Application of Northwest and KLM, Order 93-1-11, January 8, 1993, p. 19; Information Directives Concerning CRS, Order 88-5-46, May 22, 1988; Carrier-

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Owned Computer Reservations Systems, ER-1385, Order 86-5-54, May 19, 1986; Information Directives Concerning CRS, Order 83-12-136, December 29, 1983.

For information to qualify for exemption (4), the information must be (1) commercial or financial in nature, (2) obtained from a person, and (3) privileged or confidential. See Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1290 (D.C. Cir. 1983). All of the confidential information submitted by CSA qualifies for exemption from public disclosure under this three-part test standard. The documents and information relate to commercially sensitive, proprietary, and privileged financial and corporate matters. The information was obtained from a private citizen and is not of the type generally released to the public. The public disclosure of the information is not required to further the public interest or to promote competition. In National Parks & Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974), the court held that information is "confidential" for purposes of exemption (4) if it would not customarily be released to the public by the person from whom it was obtained, and if disclosure is likely to have either of the following results: "(1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained."

CSA submits that public disclosure of the type of confidential information at issue here would cause substantial harm to its respective competitive position, and could impair the Government's ability to obtain similar information on a voluntary basis from individuals in the future.

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In addition, withholding the subject confidential information from public disclosure is also provided for under FOIA exemption (3). 5 U.S.C. §552(b)(3). Exemption (3) pertains to information specifically exempted from disclosure by some other statute, such as 49 U.S.C. § 40115. The release of the information which is the subject of this motion may “prejudice the formulation and presentation of positions of the United States in international negotiations” with foreign governments and “would have an adverse effect on the competitive position of an air carrier in foreign air transportation,” and would therefore be inconsistent with 49 U.S.C. §40115.

The information is being submitted to the Department so that the Department may expeditiously evaluate the public interest benefits that will result from granting approval of and antitrust immunity for the Delta, Air France, Alitalia and Czech Airlines alliance.

**II. ACCESS TO THESE CONFIDENTIAL DOCUMENTS SHOULD BE  
RESTRICTED TO COUNSEL AND OUTSIDE EXPERTS**

CSA is submitting highly sensitive internal corporate documents and information that should be accorded limited access. Such access should be granted only to counsel and outside experts who file affidavits stating that the affiant will (1) use the information only for the purpose of participating in this proceeding, and (2) not disclose such information to anyone other than counsel or outside experts who have filed a valid affidavit.

In order to minimize the risk of harmful disclosure of this competitively sensitive information, access should be strictly limited, as requested. CSA is separately filing,

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concurrently with this motion, four copies of this information, in a sealed envelope labeled “Confidential Treatment Requested Under 14 C.F.R. Section 302.12; Access Is Limited To Counsel Or Outside Experts Who Have Filed Valid Confidentiality Affidavits.”

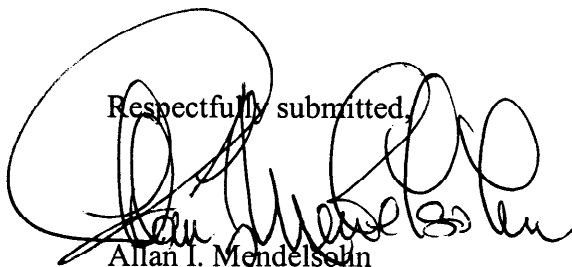
The request to limit disclosure to counsel and outside experts is fully consistent with Department precedent and policy. Thus, in United/Lufthansa, Order 93-12-32, the Department granted the applicants’ request to limit access to certain confidential information to counsel and outside experts who filed appropriate affidavits. In restricting such access, the Department balanced the disclosure of confidential information against the competitive harm to the applicants that would result if access were expanded, and concluded that “the undue competitive harm to the applicants outweighs the commenters’ need for expanded access to the highly sensitive material in this case.” Id. at 5. The Department also noted that “interested parties to this proceeding can obtain adequate advice on the merits of the application through outside experts and persons authorized to review the materials.” Id. See also Joint Application of American and Canadian International, Order 96-1-6, January 11, 1996, at 3.

Access to CSA's internal documents and data should be limited in a comparable manner, in light of the undue competitive harm to CSA that would result from a broader disclosure of such highly sensitive information.

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For the foregoing reasons, the Department should grant CSA's motion to withhold certain proprietary and commercially sensitive confidential documents and information from public disclosure, as requested herein.

Respectfully submitted,

A large, stylized handwritten signature in black ink, likely belonging to Allan I. Mendelsohn, is written over the text "Respectfully submitted," and the first line of the address block.

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Attorneys for Czech Airlines (CSA)

Dated: August 15, 2001

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion by Czech Airlines for Confidential Treatment has been served this 15<sup>th</sup> day of August, 2001, upon each of the following persons in accordance with the Department's rules.

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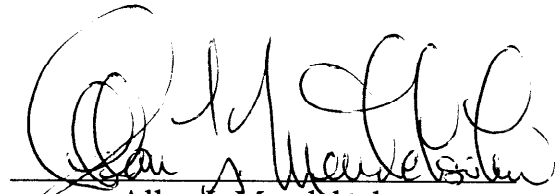
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